

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 267 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

NARUBHA H JETHWA

Versus

GONDAL NAGARPALIKA

Appearance:

MR MC BAROT for Petitioner
MS SEJAL SUTARIA for MR VH DESAI for Respondent No. 1
MS MANISHA LAVKUMAR, AGP, for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 01/08/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Ms. Manisha Lavkumar, AGP, learned counsel for
the respondent No.2 raised the following preliminary

objections:

- (i) Re. maintainability of the special civil application.

That the petitioner has already filed a civil suit in the matter, which is pending in the civil court. Prayer made for grant of interim relief has not been granted. the petitioner when has already availed of remedy of the civil suit, this petition may be dismissed.

- (ii) The petitioner has concealed this fact from the court that he has already filed the civil suit in the Civil court.

3. So far as these two preliminary objections are concerned, during the course of arguments, Ms. Manisha Lavkumar, AGP, has shown me a typed copy of the order passed in the civil suit wherein the interim relief has been rejected. However, from this order I find that the suit has been filed by the petitioner only against the respondent No.2. The respondent No.1 does not seems to be the party there. Be that as it may.

4. These objections have not been raised by the respondent No.2 by filing reply to the special civil application and the petitioner has no opportunity to give out any of his defence. Without raising these objections in the reply, orally it is difficult to permit these objections and that too to take the same to be ground for dismissal of the special civil application. there is all possibility that the petitioner may have some plausible explanation for this.

5. So far as the second preliminary objection is concerned, if we go by the dates of filing of the special civil application which is presented in the Court on 15th January, 1992 and the order of the civil court is of 20th February, 1992 learned counsel for the respondent No.2 has failed to give out the date on which that suit has been filed by the petitioner in the civil court. Unless it is established that the suit has been filed prior to 15th January, 1992, it cannot be assumed and presumed what to say to be taken that the suit has been filed by the petitioner earlier to the filing of the special civil application.

6. In the special civil application, the petitioner has prayed for declaration that the petitioner is a lawful tenant of the respondent No.1 of the land on which the petitioner has kept the cabin and is doing his

business. Further it is prayed that the action of the respondents-authorities in removing the cabin of the petitioner be declared as illegal, arbitrary and against the principles of natural justice and in violation of the provisions of Article 14 of the Constitution. Prayer has been made for direction to the respondent-Nagarpalika not to remove the cabin of the petitioner which is installed near the Bus Stand, Gondal. Prayer has also been made for grant of interim relief.

7. This special civil application has been admitted on 15th January, 1992 and interim relief to the effect that the cabin placed by the petitioner as mentioned in the petition should not be removed forcefully and without due process of law has been granted. It is not in dispute that this interim relief continues for all these years.

8. The respondent No.1 has not filed reply to the special civil application. So the averments made by the petitioner in the special civil application stand uncontroverted. I find sufficient merits in the contention of Ms. Sejal Sutaria, learned counsel for the respondent No.1 that in a petition under Article 226 of the Constitution, this court may not give any declaration that there exists relationship of landlord and tenant in between the petitioner and the respondent No.1. The petitioner made a specific pleading that there exists relationship of landlord and tenant in between the petitioner and the respondent No.1 but this fact has not been denied and in normal course it has to be taken to be admitted. Be that as it may. On the record of the special civil application, the petitioner produced the rent receipt for the rent which he paid to the respondent No.1 as well as Bhada Chitthi. These documents have not been controverted by the respondent No.1 by filing reply to the special civil application. From these documents, whether it can be taken to be a case of relationship of landlord and tenant between the petitioner and the respondent No.1 is difficult but the petitioner cannot be said to be a ranked trespasser on the land in dispute. During the course of arguments, both the learned counsel for the respondents tried to make contention that this land which has been given to the petitioner is part of a public road i.e. footpath but for which nothing has been produced on the record of this special civil application. It is most unfair and against the basic principles of natural justice and fairplay to raise all these contentions orally. The very fact that the respondents have not filed reply to the special civil application goes to show that they have no case whatsoever against

the petitioner. In the presence of the documents aforesaid i.e. the rent receipt and Bhada Chitthi the petitioner's possession on the land in dispute is a permissible possession and for removal of his cabin and dispossessing him from the land in dispute, rightly this Court said way back on 15th January, 1992 that the respondents cannot be allowed to remove the petitioner forcefully and without due process of law.

9. In the result, this special civil application is disposed of in terms that in case where the respondents No.1 and 2 propose to dispossess the petitioner from the land in question, it is permissible to them only after following the due process of law and not forcefully. Rule stand disposed of accordingly with no order as to costs.

zgs/-